SPANISH SPRINGS PILOTS ASSOCIATION, INC.

167 IBLA 284 Decided December 28, 2005

Editor's note: Appeal filed, Civ. No. CV-06-00172 BES/RAM (D. Nev. Mar. 30, 2006), **aff'd** Sept. 19, 2007**; appeal filed,** No. 07-16878 (9th Cir. Oct. 8, 2007), **aff'd** May 14, 2009 (2009 WL 1336732)

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

SPANISH SPRINGS PILOTS ASSOCIATION, INC.

IBLA 2003-282 Decided December 28, 2005

Appeal from a decision of the Assistant Manager, Nonrenewable Resources, Carson City Field Office, Nevada, Bureau of Land Management, establishing the annual rental for a public airport lease. N-59805.

Affirmed.

1. Airports--Public Lands: Appraisals--Public Lands: Leases and Permits--Rent

BLM's determination of the annual rental for an airport lease on public lands, based on its appraisal of the fair market rental value of the lease, will be upheld where the lessee fails to demonstrate, by a preponderance of the evidence, that the appraisal was flawed in its methodology, analysis, or conclusions, or otherwise fails to demonstrate that BLM did not properly assess the fair market rental value.

APPEARANCES: Mark Wray, Esq., Reno, Nevada, for appellant; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The Spanish Springs Pilots Association, Inc. (hereinafter, appellant) [1/] has appealed from a June 6, 2003, decision, entitled "RENTAL DETERMINATION," of the

[1/] Appellant describes itself as a "Nevada non-profit corporation," which is composed of 20 voting members, all of whom are local residents "who pay from their own pockets to maintain a public-use airport for the benefit of all the residents of Washoe County, at no expense to taxpayers." (Notice of Appeal/Request for Stay at 2.)

Assistant Manager, Nonrenewable Resources, Carson City Field Office, Nevada, Bureau of Land Management (BLM), establishing the annual rental for its public airport lease, N-59805. [2/] The decision increased the annual rental from $5,600 to $18,340, based on BLM's May 6, 2003, appraisal of the fair market rental value of the lease.

The subject public airport lease was originally issued to appellant on July 31, 1996, for a 20-year term, pursuant to the Act of May 24, 1928, as amended, 43 U.S.C. §§ 1441-1443 (2000), and its implementing regulations, 43 CFR Subpart 2911. [3/] Section 3(a) of the lease provides that the rental charge for the first year is $5,600, and will be payable each year thereafter "subject to reconsideration and revision at five-year intervals." Appellant paid annual rental of $5,600 each year through July 31, 2003. (Decision at 1.)

In 2003, more than seven years after issuance of the lease, BLM undertook to reassess the fair market value of the public lands at issue, for rental purposes. Jeffrey W. Surber, a BLM Staff Appraiser, who had prepared the original March 14, 1996, appraisal of the property, prepared a second appraisal of the property, which was set forth in a May 6, 2003, "Restricted Use Appraisal Report" (Appraisal Report). [4/] Surber set out first to determine the fair market value of the property, for

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[2/] By order dated July 24, 2003, we granted appellant's petition for a stay, thus staying the effect of BLM's June 2003 decision during the pendency of the appeal.

[3/] The lease covers 34.95 acres of public land situated in sec. 22, T. 21 N., R. 20 E., Mount Diablo Meridian, Washoe County, Nevada, described as: E½E½ of Lot 6, Lot 11, E½E½SE¼NW¼, and E½E½NE¼SW¼. The property is situated in Spanish Springs Valley, approximately one mile west of the Pyramid Lake Highway (State Route 445) and nine miles northeast of Reno, Nevada, near the metropolitan areas of Reno and Sparks, Nevada. The land was originally subject to a public airport lease covering 191 acres of public land, which was issued Feb. 20, 1970, and relinquished Apr. 5, 1994.

[4/] Surber stated that he was familiar with the area, having "completed several appraisal assignments and appraisal review assignments in the area during the past 19 years." (Appraisal Report at 1.) Surber's appraisal report was "Restricted" because it was intended to be used "only * * * for its stated purpose to estimate the annual [rental] rate of the subject property," which was the public airport site. (Appraisal Review, dated May 21, 2003, at unpaginated 2; see Appraisal Report at 1, 2.) Further, the appraisal report "contains minimal documentation and has limited reliability in supporting the final value conclusion of the subject property," and "may

(continued...)

purposes of sale in fee simple, employing the comparable sales method of appraisal. He concluded that the highest and best use of the property was for residential development:

> The property is irregularly shaped, being a strip of land running north-south and a roughly square shaped addition contiguous to the west side at the north end. The north-south strip of land is used for aircraft takeoff and landing and the northern portion is occupied by airplane hangers. The property is located about 9 miles northeast of Reno, Nevada. Based upon the current uses, size and other factors, the highest and best use - as vacant[]- is for residential purposes.

(Appraisal Report at 2.) Surber recognized that the Truckee Meadows Regional Planning Agency had included the land in an area designated as a "Development Constraints Area" (DCA), thus seeking to preserve the area "for open space and recreational purposes," but concluded that the property would "likely" be used for residential development, were it to be privately held. Id. at 4.

Relying on this highest and best use, Surber selected seven "somewhat comparable" sales, ranging in price from $4,958 to $13,223 per acre, which had been proximate in time ("relatively recent") and distance ("within 5 miles"), and which involved the same highest and best use. (Appraisal Report at 4; Appraisal Review at unpaginated 3.) He noted that these sales "ranged from rural homesite parcels of 10 acres to one sale of 228 acres where allowable zoning is one residence per acre." (Appraisal Report at 4.) Surber then adjusted the sale prices of the comparable properties to account for differences in size, topography, utilities, water rights/approvals, zoning, access, and location between the property at issue and the comparable properties - "all factors felt to influence value." Id. at 6. He found the subject property "superior to the properties exhibiting highest and best uses as singular homesites," but inferior to properties exhibiting "high density residential uses," given the "fairly significant series of events that would have to take place in order to * * * develop the property" for that use and concluded that it fell "near the midpoint of the bracketed value." Id. Accordingly, Surber valued the subject property at $10,000 per acre, resulting in an overall fair market value, for sale purposes, of $349,500, as of April 29, 2003.

[4/] (...continued)
not be understood properly without additional information in the appraiser's workfile." (Appraisal Review at unpaginated 2; Appraisal Report at 2.)

Next, Surber considered that the subject property's use as an airport encumbered the lease, diminishing the rights granted to the lessee, and took into account the fact that the airport was open to unrestricted use by the Federal government and the general public, thus limiting the extent of the leased rights. Applying a use restriction discount of 25 percent, Surber valued the property for purposes of sale in fee simple at $262,000, as of April 29, 2003.

Surber then translated this value to a fair market rental value, using a rate of return of 7 percent, which was mid-range of then current rates of 5.5 to 8.5 percent. Surber thus concluded that the fair market rental value of the property was $18,340, as of April 29, 2003.

Surber's appraisal was reviewed and approved by Paul H. Rose, Chief State Appraiser, Nevada, BLM, who set forth his opinion in a May 21, 2003, Appraisal Review. Rose found Surber's Appraisal Report to be brief and noted that the discussion of highest and best use was confined to "three sentences":

> Arguably, this is too limited even for a restricted report. However, the appraiser does discuss highest and best use issues as a part of his "Neighborhood Data" discussion on Page 4 of the report. His final conclusion of a residential highest and best use seems reasonable. Therefore, given the nature and use of the report the analysis is believed to be adequate.

(Appraisal Review at unpaginated 3.) Rose approved of Surber's appraisal methodology, found that "all of the pertinent facts appear to have been considered," including the data which he found adequate and relevant, and determined that Surber's analysis and conclusions seemed to be reasonable and appropriate. Id. He thus "concur[red] with the appraiser's annual market rent conclusion of $18,340." Id. at unpaginated 4.

In his June 2003 decision, the Assistant Manager notified appellant that, pursuant to the directive in 43 CFR 2911.1(e) that "rentals shall be revised at 5-year intervals to reflect current appraised fair market value," BLM had undertaken an appraisal, approved as of April 29, 2003, and determined that the annual fair market rental for the public airport lease, for the period of July 31, 2003, through July 31, 2004, was $18,340. (Decision at 1.) Payment was required to be made on or before July 31, 2003. [5/] Id.

[5/] Appellant notes that BLM's June 2003 decision afforded it "less than two months' (continued...)

Appellant appealed timely, objecting to the "300%-plus increase" in annual rental. [6/] (Notice of Appeal and Request for Stay - Amended at 2.) Appellant contends that the rental is "excessive," owing to "fundamental flaws" in BLM's appraisal, and principally challenges BLM's determination that the highest and best use of the public land at issue is for residential development, arguing that the BLM appraisal failed to set forth "rigorous and documented findings" supporting a highest and best use different from "the existing use and legal restrictions [on use] in place," as required by the BLM Manual. (SOR at 1, 5.)

Appellant also argues that, in setting the rental, BLM failed to "consider[] * * * all pertinent facts and circumstances," thus violating 43 CFR 2911.1(e). It notes that such facts and circumstances are 1) the land at issue is "subject to a 20-year lease in a DCA zoning for open space requiring that it be used exclusively as a public-use airport"; 2) the property is "a long, narrow strip of land not suitable for development because of its shape"; 3) the property is not "vacant and non-income producing"; 4) the property is not "currently used as a private airstrip," but as a public-use airport; 5) the comparable properties are not comparable, since they are "privately-owned properties of standard dimensions zoned for residential

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[5/] (...continued)
notice" of the substantial rental increase, but does not assert that this gave rise to any violation of a Federal statute, regulation, or even Departmental policy. (Statement of Reasons for Appeal (SOR) at 8.)

[6/] In our order dated July 24, 2003, granting appellant's petition for stay, the Board noted "that we have stated on numerous occasions that in the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal normally may be rebutted only by another appraisal." In its SOR, filed July 28, 2003, appellant requested "the opportunity to supplement this statement of reasons for appeal, including the possibility of providing evidence from an independent appraiser if one can be engaged and the appraisal can be completed before the decision of this matter." (SOR at 8.) By order dated July 31, 2003, the Board granted appellant's request to "file such pleading, including any independent appraisal, within 90 days of receipt of this order" and added that "[s]hould additional time be necessary, the Association should so request prior to the expiration of the 90-day period." Appellant did not submit a supplemental SOR or independent appraisal. However, on Oct. 14, 2003, appellant filed a request for an evidentiary hearing, which the Board denied by order dated Nov. 25, 2003. "Based on a preliminary review of the record," the Board found that the present record did not appear to present "conflicting issues of fact which would require an evidentiary hearing to resolve." We concluded that "at this juncture a hearing is not warranted."

development"; and 6) "the threatened loss of access [by adjacent landowners seeking to shut down the airport] should reduce the value of the property because any use of the land could be terminated." [7/] (SOR at 6, 7-8 (quoting Appraisal Report at 2, and Appraisal Review at unpaginated 1).)

[1] The Act of May 24, 1928, as amended, authorizes the Secretary of the Interior to issue public airport leases, "subject to * * * an annual rental of such sum as the Secretary of the Interior may fix" for the use of the lands, but does not specify the manner in which rental is to be determined. 43 U.S.C. § 1442 (2000). One of the regulations implementing that statute, 43 CFR 2911.1(e), provides, in relevant part, that the "[a]nnual rental [for a public airport lease] * * * shall be at appraised fair market rental, with a minimum annual rental payment of $100." [8/] It further provides: "In fixing the rental, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies." Id. Finally, the regulation states that "[r]ental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value." Id.

Rental determinations based on BLM appraisals of the fair market rental value of rights-of-way granted pursuant to Title V of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. §§ 1761-1771 (2000), are entitled to considerable deference, and may be overturned only in limited circumstances:

[7/] We regard appellant's assertion that BLM failed, in its appraisal, to consider the fact that the land at issue is "in a DCA zoning for open space" as a reiteration of its argument that BLM erred in determining the highest and best use of the property by not taking this fact into account. (SOR at 6.) Similarly, appellant's assertion that BLM relied on comparable properties which are not, in fact, comparable, because they are "zoned for residential development," is another way of saying that the highest and best use of the land at issue is not for residential development. Id. at 7. The question, in both cases, is whether current zoning is determinative of the highest and best use of that land.

[8/] The regulation also provides for a reduced annual rental, amounting to "the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100," in the case of a "State or political subdivisions thereof, including counties and municipalities[.]" 43 CFR 2911.1(e). Since appellant is not a State or political subdivision thereof, it is clearly not entitled to this reduced rental.

> It is well established that such a determination will not be overturned unless the appellant demonstrates, by a preponderance of the evidence, that BLM's appraisal methodology was fatally flawed, that it failed to consider a relevant factor bearing on value, used inappropriate data, erred in its calculations, or that the rental arrived at does not, in fact, represent the right-of-way's fair market rental value. Private Line Communications, 143 IBLA 346, 353 (1998); Gifford Engineering, Inc., 140 IBLA 252, 263-65 (1997); Michael D. Dahmer, 132 IBLA [17,] 24-25 [(1995)]; Quality Broadcasting Corp., 126 IBLA 174, 188 (1993); Voice Ministries of Farmington, Inc., 124 IBLA 358, 361 (1992).

George A. Weitz, Inc., 158 IBLA 194, 198 (2003). Further, in the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal normally may be rebutted only by another appraisal. David M. Stanton, 166 IBLA 234, 237 (2005). Given the similarly broad authority granted to BLM to assess rental in the case of public airport leases, based on BLM's fair market rental value determinations, we think that these standards of review are equally applicable here.

We start with appellant's contention that the BLM appraisers erred in regarding the property as "'vacant and non-income producing,'" and thus in deciding to use the comparable sales method of appraisal, rather than the cost or income approaches to valuation. (SOR at 6 (quoting Appraisal Report at 2).) Appellant argues that the property is used as a public-use airport, "generat[ing] dues from its members to pay expenses of the non-profit corporation," and that, had BLM employed these approaches, they would have "support[ed] a nominal rental amount." (SOR at 7.)

We have long held that the comparable leases or sales method of appraisal is the preferred appraisal methodology, where there is sufficient data regarding such transactions and appropriate adjustments are made for any differences between the subject and other transactions, in terms of relevant factors affecting fair market value. Southern California Sunbelt Developers, Inc., 154 IBLA 115, 125 (2001); Laguna Gatuna, Inc., 121 IBLA 302, 306 (1991); Northwest Pipeline Corp., 65 IBLA 245, 248 (1982). While the income approach to appraisal is also acceptable, see, e.g., Vernon Ravenscroft, 137 IBLA 39, 42-43 (1996) (right-of-way), and Ronald C. Agel, 83 IBLA 76, 79-80 (1984) (oil and gas lease), we do not think that membership "dues" which are paid by individuals/members to the lessee/incorporated association, of which they are members, and which are used to defray corporate "expenses" can be held to constitute the generation of income by the leased property at issue, thus justifying an income approach to the appraisal of that property. Thus, appellant has provided no

basis for use of the income approach. Nor has appellant presented any argument or evidence supporting use of the cost approach, let alone that either approach would have resulted in a "nominal" rental. Therefore, we do not find that BLM erred in adopting the comparable sales method of appraisal.

Appellant principally challenges BLM's determination of the highest and best use of the public land at issue as residential development: "The lease requires that the land be used solely as a public-use airport. Therefore, it makes sense that the 'current fair market value' standard would mean that the property is being appraised based on its status as airport use only and not for some other hypothetical -- and unrealistic -- use as a residential subdivision." (SOR at 2, emphasis added.) Appellant argues that not only is the land currently used as a public airport, as required by lease "at least until 2017," but there also are legal restrictions which preclude any use of the land for residential development. Id. at 6. It notes that the Truckee Meadows Regional Planning Agency has, for zoning purposes, designated the land as part of a "Development Constraints Area" (DCA), pursuant to the 2003 Truckee Meadows Regional Plan (Regional Plan), thus seeking to "'preserve'" the land "'in an undeveloped state whe[r]ever possible.'" (SOR at 2 (quoting Regional Plan).) Appellant concludes that the BLM appraisers erred by "assum[ing] that the property is a fee simple without restrictions and free of all encumbrances[.]" (SOR at 6.)

Appellant states that highest and best use is the "'most productive use'" to which a property might be put, considering all the uses which are "'legally permissible, physical[ly] possible, and financially feasible[.]'" (SOR at 4-5 (quoting BLM Manual § 9310.23.D (Rel. 9-355 (10/27/99)).) [9/] It acknowledges that highest

[9/] Appellant refers to provisions of the BLM Manual providing guidance to BLM regarding the appraisal of real property in effect at the time of BLM's May 2003 appraisal and June 2003 decision. We note that, by Secretarial Order (SO) No. 3251, dated Nov. 12, 2003, the Secretary consolidated the Department's real estate appraisal functions, transferring those functions from all bureaus and offices of the Department, except the Office of Special Trustee for American Indians, to the National Business Center (NBC) Office of Appraisal Services. SO No. 3251 was amended on Oct. 22, 2004, prior to its Oct. 31, 2004, expiration date. (SO No. 3251, Amendment No. 1.) That amendment established the Appraisal Services Directorate in the NBC, as the office responsible for the Department's real estate appraisal functions, with the exception noted above. The Amendment also established that "[r]eal estate appraisals must be performed pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions or the Uniform Standards of Professional (continued...)

and best use may not be the current use, especially when the land is owned by the United States, but may be a use which is likely to occur, if the land is in private hands. However, appellant argues that the BLM appraiser failed to demonstrate that the highest and best use of the land is residential development and asserts that use of the subject property for residential development is precluded by law and unsupported by the appraiser's analysis which concludes that "'[t]he land is physically suitable for residential construction which is the predominant use in the area.'" (SOR at 3 (quoting Appraisal Report at 4).) [10/]

It is well established that, in determining the fair market rental value of a Federal lease, BLM is not required to assess the value of the leased land only according to the use to which the property is currently being put, since such use is not necessarily determinative of the highest and best use to which the property might be put. As we stated in Western Slope Gas Co., 61 IBLA 57, 59 (1981), quoting from the Uniform Appraisal Standards for Federal Land Acquisitions (1973) (UAS):

> [Highest and best] "use" is defined in Uniform Appraisal Standards at 7:
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> > By highest and best use is meant either some existing use on the date of taking, or one which the evidence shows was so reasonably likely in the near future that the

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[9/] (...continued)
Appraisal Practice." (SO No. 3251, Amendment No. 1, Sec. 4.) A second amendment, effective Oct. 28, 2005, extended the terms of Amendment No. 1 until May 31, 2006, or until Amendment No. 2 is amended, superceded or revoked, or until the provisions are converted to the Departmental Manual. (SO No. 3251, Amendment No. 2, Sec. 7.) On June 8, 2004, BLM issued Instruction Memorandum (IM) No. 2004-190, which rescinded BLM Manual 9310--Appraisal of Real Property, in light of the consolidation of BLM's appraisal function within the NBC.

[10/] Appellant also refers specifically to the BLM Manual's guidance regarding the situation where BLM's appraiser is of the opinion that the highest and best use of the land being appraised differs from its current use. Appellant states that, under the BLM Manual, in those circumstances, the appraiser should support that opinion with a "thorough analysis of the relevant factors" and provide a "clear and supportable explanation documenting the reasonable probability of the likely change in use" and, when a change in zoning is necessary, the likelihood that such change is "more probable to occur than not." BLM Manual §§ 9310.06.G, 9310.23.A, 9310.23.B, 9310.23.C (Rel. 9-355 (10/27/99)).

> availability of the property for that use would have affected its market price on the date of taking and would have been taken into account by a purchaser under fair market conditions. [11/]

See Olson v. United States, 292 U.S. 246, 255 (1934). [12/]

See Exxon Corp., 106 IBLA 207, 210-11 (1988); Black Hills Power & Light Co., 73 IBLA 199, 201-02 (1983); Western Slope Gas Co., 61 IBLA at 62-63. Thus, BLM is not constrained here by the use to which the property is presently being put in accordance with the subject public airport lease. Rather, BLM is permitted to determine the highest and best use to which the property might be put, were the lease to cease to exist, and then to assess the fair market rental value of the property for that use.

The critical question here is whether the property at issue has, considering all relevant factors, a highest and best use other than for public airport purposes. 13/ One factor is the applicable zoning to which the property is currently subject,

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11/ The UAS, promulgated by the Interagency Land Acquisition Conference and adopted by the Department, has long been relied upon by BLM in valuing rights-of-way and leases. 602 Departmental Manual 1.3 (Rel. 2589 (9/12/84)) ("[The UAS] standards are to be used as a guide by all bureaus and offices"); see BLM Manual § 9310.06.B (Rel. 9-355 (10/27/99)).

12/ In Olson, 292 U.S. at 255, the Supreme Court stated:
"The sum required to be paid the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered * * * to the full extent that the prospect of demand for such use affects the market value while the property is privately held." [Citations omitted; emphasis added.]

13/ Appellant objects to Rose's assertion that the property, leased to a private entity, is currently being used "'as a private airstrip.'" (SOR at 7 (quoting Appraisal Review at unpaginated 1).) We note that both Surber and Rose were well aware that appellant offered the airport for public use. Indeed, Surber took this fact into account in arriving at the 25-percent use restriction discount. See, e.g., Appraisal Report at 7 ("[T]he airport * * * cannot be closed to other users. The lessee[] [is] therefore providing a service to other members of the public who choose to use the facility.").

recognizing that zoning may, in appropriate circumstances, be changed to accommodate new uses. However, it is clear that any restrictions on residential development of the land at issue do not stem from any zoning action by a city, county, or other local governmental body, despite appellant's intimations to the contrary. [14/] Rather, inclusion of the land in the DCA was action taken by the Truckee Meadows Regional Planning Agency, in issuing its 2003 Truckee Meadows Regional Plan. (Appraisal Report at 4.) Surber explained, at page 4 of his Appraisal Report, that such designation stemmed from the fact that "the local authorities have expressed an interest in having the land retained by the federal government for open space and recreational purposes." [15/] (Emphasis added.) The effect of designation extends only to the fact that, "'[i]n order to preserve the scenic, natural, public safety, recreational, and environmental values of the area, Local Government and Affected Entity Master Plans must include components to preserve development constrained lands in an undeveloped state wherever possible.'" (Appraisal Report at 4 (quoting Regional Plan).) Thus, DCA designation generally operates only as a planning directive for local agencies.

Further, the designation does not constitute a zoning restriction on use and development of the land. [16/] Therefore, it appears that, even if the land at issue was privately owned, such designation would not necessarily preclude residential development. Appellant provides no evidence to the contrary. Thus, all of appellant's references to BLM Manual requirements that a BLM appraiser demonstrate that a zoning change permitting residential development is "more probable to occur than not" or is "reasonabl[y] probab[le]" are misplaced. No such showing was required.

[14/] See e.g., "Surber's approach is to ignore the current zoning, characteristics, use and ownership of the property and assume that its 'highest and best use' would be [as] a residential subdivision" (SOR at 3); "The property being appraised is * * * in a DCA zoning for open space" (Id. at 6).

[15/] Surber explained that the cooperative relationship between Federal agencies and local planning agencies deviates from the historical approach taken by local agencies, which was to "disregard[] the federal land as they have no jurisdiction." (Appraisal Report at 4.) Rather, he noted that, "[i]n the last 10 years, cities and counties have begun looking beyond their original scope and worked with federal agencies during their planning process." Id., emphasis added.

[16/] See BLM Answer at 7-8 ("A development constraints area is a 'suitability' designation, not a zoning designation"), and at 8-9 ("The subject property is currently zoned as 'General Rural[]' * * * [which] allows for at least one dwelling per 40 acres (and possibly more)").

In addition to lease and zoning restrictions, appellant argues that the BLM appraisers erred in not taking into account the physical limitations on residential development of the land at issue, given the "long, narrow" configuration of the property. (SOR at 6.) Both Surber and Rose took the long, narrow shape of the property into account to the extent that they assumed that the shape of the parcel of land at issue was "typical of the market," even though the parcel was rendered long and narrow in order to minimize its fair market rental value, which was "atypical" of the market. [17/] (Appraisal Report at 2; Appraisal Review at unpaginated 5.) Thus, the BLM appraisers made "no adjustment [in value] * * * for the irregular, non-standard parcel shape." [18/] Id.; see BLM Answer at 12. They did not assume that the shape of the parcel would affect its suitability for residential development. Appellant offers no evidence to the contrary.

We are persuaded that BLM has adequately demonstrated that the highest and best use of the land at issue is for residential development. BLM has shown that the Spanish Springs Valley area in which the land at issue is situated is generally "in private ownership"; that the area is experiencing residential growth, and indeed is considered to be "one of the fastest growing areas in the Reno-Sparks region"; and that the land is "immediately adjacent to land that is under high density residential development." According to the agency, taking into consideration these factors as

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[17/] Rose termed the assumption an "Extraordinary Assumption," which was fully disclosed in both BLM appraisal reports, thus referring to an assumption which is "directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions." (Appraisal Review at unpaginated 2; see Appraisal Report at 2.)

[18/] BLM explains on appeal:

"Th[e] 34.9[5] acres is within a larger 191 acres which comprised an earlier airport lease * * *. The decrease in acreage was not a result of the [F]ederal government's sale of the additional acreage, but a function of the Appellant's desire to minimize the amount of rent it would pay. Thus, the appraiser determined that the irregular shape of the parcel was for the convenience of the lessee and did not reflect the type of circumstance which would normally devalue a private property parcel. Again, the appraiser must consider the value of the [F]ederal land, as if it were marketable. Since a private landowner would generally attempt to maximize income, a private landowner would not carve out an irregular size parcel which would ultimately devalue the overall property; therefore, the government's leasing of only an irregular size portion of the public lands is not a basis for decreasing the overall value of the subject land." [Emphasis added.]

(Answer at 12-13.)

well as the "good access provided by S.R. [State Route] 334 and the extension of Sparks Boulevard, it is anticipated that the current residential growth will continue into the future." (Appraisal Report at 3, 4; see id. at Maps ("Spanish Springs Land Use Plan," dated Feb. 5, 2002, and "Spanish Springs Specific Plan Land Use Plan," dated January 1999).) Appellant has not supported its argument that certain facts, including the land's current use and inclusion in the DCA, preclude a finding that its highest and best use is residential development. Therefore, appellant has not established, by a preponderance of the evidence, that BLM incorrectly determined the highest and best use of the land at issue.

Appellant also asserts that there is a "threatened loss of access" to the property, but fails to offer any evidence that this "threat" has reached the point where it is likely to affect the fair market rental value of the land at issue. (SOR at 7; see Letter to appellant from Spanish Springs Associates Limited Partnership, dated May 28, 2003 (attached to SOR) (alleging breaches of license agreement, aviation easement agreement, and agreement not to appeal County development approval); BLM Answer at 14-15.) Nor do we find any such evidence. Thus, BLM did not err by declining to take into account appellant's conflicts with adjacent landowners.

Finally, appellant objects to BLM's decision to discount the fair market value of the property by only 25 percent, calling this discount rate "an arbitrarily low adjustment" and asserting that, since the lessee "shares the airport with the general public," its interest should be "nominally valued consistent with the public's untrammeled right to use the property." (SOR at 7.) However, appellant presents no evidence of error in BLM's analysis or conclusion. BLM's 25-percent use restriction discount is designed to account for restrictions on the lessee's use of the land and takes into account unrestricted public use of the airport. We find no error in BLM's analysis or conclusion.

To the extent not expressly addressed herein, all other errors of fact or law asserted by appellant in BLM's decision are rejected as contrary to the facts or law, or immaterial. [19/]

Therefore, we conclude that BLM, in its June 2003 decision, properly established the annual rental for public airport lease N-59805 at $18,340. Appellant failed to demonstrate, by a preponderance of the evidence, that BLM's appraisal was fatally flawed in its methodology, analysis or conclusions, and otherwise failed to

[19/] Having fully reviewed the entire record and pleadings, we remain convinced that there are no issues of material fact remaining to be resolved and, therefore, no need for an evidentiary hearing.

demonstrate that BLM did not properly assess the fair market rental value of the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Christina S. Kalavritinos
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge